

213984

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May 12, 2005

Re: STB Docket No. 34608- Ohio Valley Railroad Company – Petition to Restore
Switch Connection and Other Relief

Hon. Vernon A. Williams
Secretary, Surface Transportation Board
Mercury Bldg., #711
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
MAY 16 2005
Part of
Public Record



Dear Secretary Williams:

Enclosed for filing please find the original and ten copies of the Joint Petition of Ohio Valley Railroad Company and Mid-America Locomotive Car Repair Co., Inc. for imposition of procedures for proper and safe reinstallation of switch connection, prescription of interchange agreement and relief from discriminatory switch charges together with Verified Statements from Bruce E. Knight, President of Mid-America Locomotive and Car Repair, Inc. and William E. Gray, President, Ohio Valley Railroad Company.

Copies of this Joint Petition have been served on all parties of record. Please time stamp the copy of this letter for proof of filing and return it in the self addressed, stamped envelope provided.

Very truly yours,

VUONO & GRAY, LLC

Richard R. Wilson, Esq.
Attorney for Ohio Valley Railroad Company
and Mid-America Locomotive and Car
Repair, Inc.

RRW/bab
Enclosure

xc: Office of Proceedings
All Parties of Record

213984



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34608

OHIO VALLEY RAILROAD COMPANY – PETITION TO RESTORE SWITCH
CONNECTION AND OTHER RELIEF

**JOINT PETITION FOR IMPOSITION OF PROCEDURES FOR PROPER AND
SAFE REINSTALLATION OF SWITCH CONNECTION,
PRESCRIPTION OF INTERCHANGE AGREEMENT
AND RELIEF FROM DISCRIMINATORY SWITCH CHARGES**

Richard R. Wilson, Esq.
Vuono & Gray, LLC
2310 Grant Building
Pittsburgh, PA 15219
412-471-1800
Attorney for Ohio Valley
Railroad Co. and
Mid-America Locomotive
and Car Repair Co., Inc.

Dated: May 12, 2005

ENTERED
Office of Proceedings
MAY 16 2005
Part of
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34608

OHIO VALLEY RAILROAD COMPANY – PETITION TO RESTORE SWITCH
CONNECTION AND OTHER RELIEF

**JOINT PETITION FOR IMPOSITION OF PROCEDURES FOR PROPER AND
SAFE REINSTALLATION OF SWITCH CONNECTION,
PRESCRIPTION OF INTERCHANGE AGREEMENT
AND RELIEF FROM DISCRIMINATORY SWITCH CHARGES**

Petitioners Ohio Valley Railroad Company (“OVR”) and Mid-America Locomotive and Car Repair, Inc. (“Mid-America”) (collectively “Petitioners”) file this Petition in the above captioned proceeding seeking relief under 49 USC §§10701, 10741, and 10742 and enforcement of the Order of the Surface Transportation Board in this Docket, dated February 23, 2005.

Unfortunately, the relationship between Petitioners and Indiana Southwestern Railway Co. (“ISW”) is a contentious one. ISW has repeatedly sought to challenge efforts by OVR to utilize the rail facilities in Harwood Yard, Indiana, to provide common carrier rail service to Mid-America and establish new rail services for the public and other shippers.¹

As the Board is aware, ISW provides the only rail connection (by a 300-foot intercarrier switch) between the rail facilities of OVR and CSX Transportation, Inc. on

¹ See STB Finance Docket 34486 Ohio Valley Railroad Co. – Acquisition and Operation Exemption – Harwood Properties, Inc., Feb. 23, 2005; STB Finance Docket 34599, Petition of Mid-America for Declaratory Order, filed October 26, 2004, petition pending.

the tracks of ISW immediately adjacent to Harwood Yard. By Order dated February 23, 2005, the Board found that ISW had, in violation of 49 USC §10742, improperly removed the switch connection between OVR and its own track. The Board directed ISW to immediately reinstall the switch.

On February 24, 2005, counsel for ISW notified the Board that it had “initiated the process of restoring the switch” and stated that ISW “will advise the Board when that is done, per the Board’s Decision.”² Moreover, as indicated by the verified statements and exhibits of Mr. Bruce Knight of Mid-America and Mr. William Gray of OVR, the improper and unsafe reinstallation of this switch appears to have been designed to comply only with the letter of the STB’s Order while creating an inoperative and dangerous switch connection which is simply an accident waiting to occur. OVR is concerned that were an accident to occur during the use of this switch connection, it would provide ISW with a pretext for removing the switch for “safety” reasons.

In addition, ISW has refused to negotiate an interchange agreement with OVR without which ISW will not physically interchange cars with OVR. ISW has claimed that it does not have room on its tracks to interchange with OVR and OVR therefore proposed an interchange agreement which designates tracks within OVR’s Harwood Yard for interchange operations. OVR first sent a proposed standard interchange agreement to ISW on October 29, 2004; but to date, despite repeated inquiries, ISW has not responded to OVR’s interchange proposal.

The STB’s decisions repeatedly stress that interchange arrangements are not matters that require or are furthered by regulation, but are better handled through private

² Contrary to the Board’s decision and 49 C.F.R. §1119 no verified compliance affidavit has yet been filed with the Board or petitioners by ISW.

negotiations. Nonetheless, where one carrier refuses to negotiate an interchange agreement in an effort to frustrate the entry of another carrier into the rail industry, the Board can remedy such a refusal to deal by prescribing reasonable interchange arrangements proposed by the new entrant. C.f. Minnesota Northern Railroad, Inc. v. Canadian National Railway Company, STB Docket No. 42080 (March 18, 2005), Norfolk Southern Railway Company – Petition for Declaratory Order – Interchange with Reading Blue Mountain and Northern Railroad Company, STB Docket No. 42078 (April 29, 2003).

Although the Board maybe reticent as a matter of policy to prescribe interchange arrangements between carriers, Petitioners contend that the record of ISW intransigence in this proceeding and in Docket Nos. 34486 and 34599, as well as ISW's contumacious switch reinstallation, demonstrates an unacceptable determination on the part of ISW management to evade its common carrier obligations, obstruct OVR participation in the national rail transportation network and discriminate against Mid-America's car repair traffic.

Petitioners further request the Board to find that ISW has engaged in an unreasonable discriminatory practice against OVR under 49 U.S.C. §§10701 and 10742 and against Mid-America under 49 U.S.C. §§10701 and 10741. Unreasonable discrimination generally requires the establishment of dissimilar rates or services for similarly situated persons or connecting carriers which result in an unfair and anticompetitive preference to the favored party. Historically, courts have rejected attempts to limit the applicability of the requirement for nondiscriminatory conduct by rail carriers holding that these provisions can be broadly construed to accomplish their remedial purpose. Western Pacific Railway Co. v. U.S., 382 U.S. 237 (1966). While


deregulation legislation has subsequently altered the scope of §§10701 and 10741, those provisions nonetheless remain in the ICC Termination Act of 1995 and the Board can apply them in appropriate circumstances to prohibit conduct by a railroad that singles out a connecting carrier or a shipper for unreasonably disparate and unequal treatment which is not inflicted upon any other shipper or connecting carrier.

The exclusionary pattern of conduct engaged in by ISW is obstructing the ability of OVR to provide common carrier rail service and the ability of Mid-America to avail itself of that service. ISW's pattern of discriminatory and unreasonable conduct is manifestly evident on the record before the Board. ISW has engaged in unwarranted administrative proceedings challenging OVR's status as a common carrier despite well established Board precedent to the contrary. Failing that, ISW physically removed switch connections to OVR without justification in violation of §10742. Under order from the Board to reinstall that switch connection, ISW has done so in a defective and unsafe manner precluding use of the switch connection by OVR or Mid-America and has failed to file a verified affidavit of compliance with the Board's February 23, 2005 reinstallation order. Simultaneously, ISW has stonewalled all attempts by OVR to negotiate standard interchange arrangements. It has also increased its intermediate switch charge between OVR and CSXT from \$150 per car to \$2,500 per car in each direction so as to commercially preclude any interchange of locomotive, passenger car and caboose repair traffic via OVR to or from Mid-America while publishing a \$250 switch charge (including in and out) for GE Plastic's rail cars for Mid-America. Moreover, the inflation of this switch charge is not a question of rate reasonableness because this rate is not intended to be compensatory, it is published for the sole purpose of prohibiting traffic to and from OVR and Mid-America. No other connecting carrier or shipper served by ISW

is subject to such overt anticompetitive discrimination. If the Board cannot use the powers inherent in §§10701, 10741 and 10742 to address this abusive and unreasonable conduct on the part of ISW, then these provisions of the statute have been rendered meaningless.

Accordingly, Petitioners respectfully request that the Board order ISW to properly reinstall the switch connection with OVR, have that reinstallation inspected by an objective third party track inspector agreeable to OVR and submit a copy of the track inspection report to the Board's Office of Enforcement. Petitioners further request that the Board prescribe the Interchange Agreement set forth in Exhibit F to Mr. Gray's Verified Statement for use by ISW and OVR at Harwood Yard, Evansville, Indiana and order ISW to cease and desist from using exclusionary pricing practices to discriminate against OVR and Mid-America car and locomotive repair traffic and to publish a nondiscriminatory switch charge for locomotives, passenger cars and cabooses of not more than \$125 per car in each direction, comparable to the charge published by ISW for GE Plastics.

Respectfully submitted,

By: 
Richard R. Wilson
Attorney for Ohio Valley Railroad
Company and Mid-America
Locomotive and Car Repair, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of May, 2005 served a copy of the Petition for Prescription of Interchange Agreement and Proper and Safe Reinstallation upon the following by First Class United States Mail, postage prepaid:

Louis Gitomer, Esq.
BALL JANIK, LLP
1455 F. Street, N.W., Ste. 225
Washington, D.C. 20005

Daniel A. LaKemper, Esq., General Counsel
Pioneer Railcorp.
Indiana Southwestern Railroad Co.
1318 S. Johanson Road
Peoria, IL 61607



Richard R. Wilson, Esq.
Attorney for Ohio Valley Railroad Company
and Mid-America Locomotive and
Care Repair, Inc.

213984

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34608

OHIO VALLEY RAILROAD COMPANY – PETITION TO RESTORE SWITCH
CONNECTION AND OTHER RELIEF

VERIFIED STATEMENT OF WILLIAM E. GRAY

Richard R. Wilson, Esq.
Vuono & Gray, LLC
2310 Grant Building
Pittsburgh, PA 15219
412-471-1800
Attorney for
Ohio Valley Railroad Co.
and
Mid-America Locomotive &
Car Repair, Inc.

Dated: May 12, 2005

ENTERED
Office of Proceedings

MAY 16 2005

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34608

OHIO VALLEY RAILROAD COMPANY – PETITION TO RESTORE SWITCH
CONNECTION AND OTHER RELIEF

VERIFIED STATEMENT OF WILLIAM E. GRAY

My name is William E. Gray. I am President of Ohio Valley Railroad Company (“OVR”) and am authorized to submit this statement on behalf of the joint Petition of OVR and Mid-America Locomotive and Car Repair, Inc. (“Mid-America”) seeking prescription of an interchange agreement, proper switch reinstallation between the rail facilities of Indiana Southwestern Railway (“ISW”) and Ohio Valley Railroad at Harwood Yard, Evansville, Indiana, and relief from discriminatory switch charges.

In response to the Board’s Order in this proceeding dated February 23, 2005, I was initially gratified by the response of ISW indicating that it would promptly reinstall the switch connection between OVR and the ISW line. However, when I inspected the reinstalled switch and track, it became immediately apparent to me that the ISW personnel had only gone through the motions of reinstalling the switch. Attached for the Board’s review at Exhibit A are photographs of the reinstalled switch which demonstrate

the inadequate and unsafe manner in which the ISW crews made this connection. First, ISW did no ballast preparation or regulation work, but simply replaced the rail on the existing ties and ballast. Moreover, when the rails and tie plates were spiked down, ISW did not turn the ties, nor does it appear that they filled (plugged) the old spike holes, but simply inserted the spikes in the old existing holes. As a result of these deficiencies at various locations, there is a gap between tie plates and the track structure of an inch or more, leaving the track insecure and subject to displacement when under weight of a car or locomotive. Finally, ISW did not use the proper length bolts or fasteners to secure the bridal bar, header block, and the frog to the rails and in some instances, omitted bolts when making these connections.

These omissions are serious deficiencies and are so glaringly obvious that I can only conclude that ISW was intentionally and recklessly created a dangerous situation with a potential for derailment in the event that cars or locomotives were to utilize this switch connection. When, on February 25th in a telephone conversation with Attorney Daniel LaKemper (general counsel for ISW) I pointed out the improper length bolts, LaKemper responded that they (ISW) had reinstalled the track and switch and that the bolts were properly installed and were of no concern. To my way of thinking, the action taken by ISW is even worse than its removal of the switch in the first place. It has reconstructed the switch in an unsafe and inadequate fashion and thereby invited the occurrence of an accident—or at very least the possibility of a further removal of this connection from service along with an expensive repair bill from ISW for the proper re-installation or upgrade. In view of these facts, OVR has not been able to interchange the railroad passenger car (owned by Jon Clark/Domeliners, Inc.) which is still captive on

OVR. Other shippers are also having their equipment held captive (i.e. Blugrass Railroad Museum's GP-9 locomotive, Pennsylvania Pullmans' GP-7 locomotive, passenger cars owned by Iaege & Southern Railroad, a passenger car owned by Lackawanna Ninety-Eight, Inc., and passenger cars and an SD-35 locomotive owned by Mid-America). In this connection, it should be noted that Mid-America, the principle shipper served by OVR specializes in the repair and restoration of railroad locomotives, freight cars, passenger cars and cabooses.

Furthermore, OVR efforts to negotiate an interchange agreement with ISW have met with non-response. On October 29, 2004, I forwarded a draft Interchange Agreement to Mr. Shane Cullen at Pioneer Railcorp.(Exhibit B) I subsequently sent this draft to Attorney LaKemper on November 24, 2004.(Exhibit C) The final transmittal of a request for Interchange Agreement was on February 25, 2005.(Exhibit D) As shown by the exchange of e-mail correspondence between myself and the ISW representatives, OVR has been completely unsuccessful in obtaining a counterproposal or any response to our proposed Interchange Agreement. Further, we have attempted to accommodate ISW's stated concern that it was unable to tie up one of their tracks for purposes of interchanging traffic with OVR, and therefore OVR has made provision to use its tracks within Harwood Yard for purposes of interchange thereby avoiding the congestion to which ISW claims it is subject on its own trackage.(Exhibit F) Moreover, in light of the recent intemperate communication received from ISW in connection with efforts to initiate rail service at Harwood Yard, it appears that ISW intends to continue its obstructionistic policy of opposing and preventing any OVR rail operations.

Finally, even if we were able to obtain an Interchange Agreement, ISW's Tariff 8000-F (issued October 12, 2004, effective November 1, 2004) quotes an Intermediate Switch charge (one way) of \$2,500 per locomotive, \$2,500 per passenger car, \$1,000 per caboose, but only \$125 per freight car for each movement to or from OVR across the line of ISW for interchange with CSX Transportation.(Exhibit E) Indeed, ISW charges GE Plastics \$200 per car (including in and out) for switching to ISW storage tracks at Evansville adjacent to Harwood Yard and \$250 per car (in and out) for GE Plastics cars destined to Mid-America. See FT ISW 8000-F, Item 1000, Note 1. Moreover, the line haul rate published by ISW for traversing its entire 23 mile line of railroad is only \$530 per car. Thus, ISW has engaged in an overtly discriminatory and anticompetitive scheme to block the interchange of locomotive, passenger car and caboose repair traffic between OVR and ISW. In ISW's recent communication to the Board, it characterized ISW's pricing activity as "market based pricing" but that is a complete misrepresentation of what ISW is doing. ISW has simply published a noncommercial rate designed to prevent the interchange with OVR of locomotives, passenger car and caboose repair traffic moving to and from Mid-America. ISW's exclusionary conduct has nothing to do with the reasonableness of the rate charged, because that rate is not intended to move any traffic or to generate income for ISW. Rather the ISW's \$2,500 per car one way switch charge is intended to prevent rail access of passenger and locomotive repair traffic to OVR and Mid-America in preference to GE Plastics' equipment.

Accordingly, OVR respectfully requests that the Board, in light of the unique circumstances presented by ISW's pattern of discriminatory conduct in this matter, direct ISW to properly install its switch connection to OVR in accordance with the terms of our

joint petition and prescribe the Interchange Agreement which OVR has proposed to ISW for use at Harwood Yard. OVR also respectfully requests that the Board find the pricing scheme and pattern of conduct utilized by ISW for interchange switching between OVR and CSX Transportation unreasonably discriminates against OVR and Mid-America's car repair traffic, and direct ISW to cease and desist from all such conduct and to publish a nondiscriminatory switch charge of not more than \$125 per car in each direction for non GE car and locomotive repair traffic at the Mid-America car shop.

ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT A

Bridal bar bolts excessive length (photographed Sunday March 6, 2005) and originally installed upside down



ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT A (cont'd)

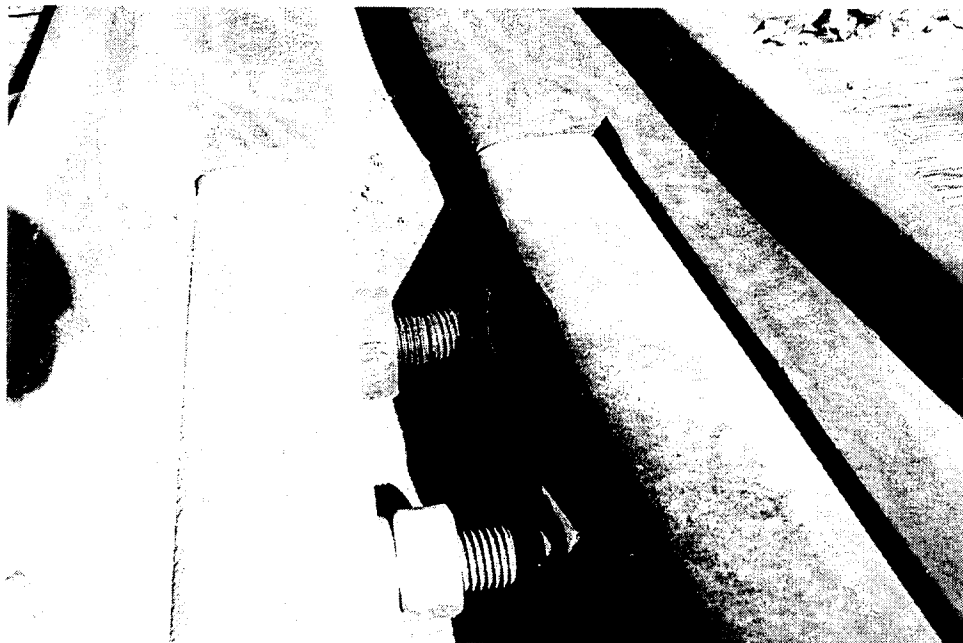
Bolt missing from side heel block (photographed Sunday March 6, 2005)



ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT A (cont'd)

Improper length bolts in frog (photographed Sunday March 6, 2005)



ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT A (cont'd)

Need to rip up 15 ties on West-side stock rail to take up 1 1/2" gap from bottom of rail to ties
(photographed Sunday March 6, 2005)



ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT A (cont'd)

Bolt missing on angle bar on lead rail to left switch point (photographed Sunday March 6, 2005)



ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT A (cont'd)

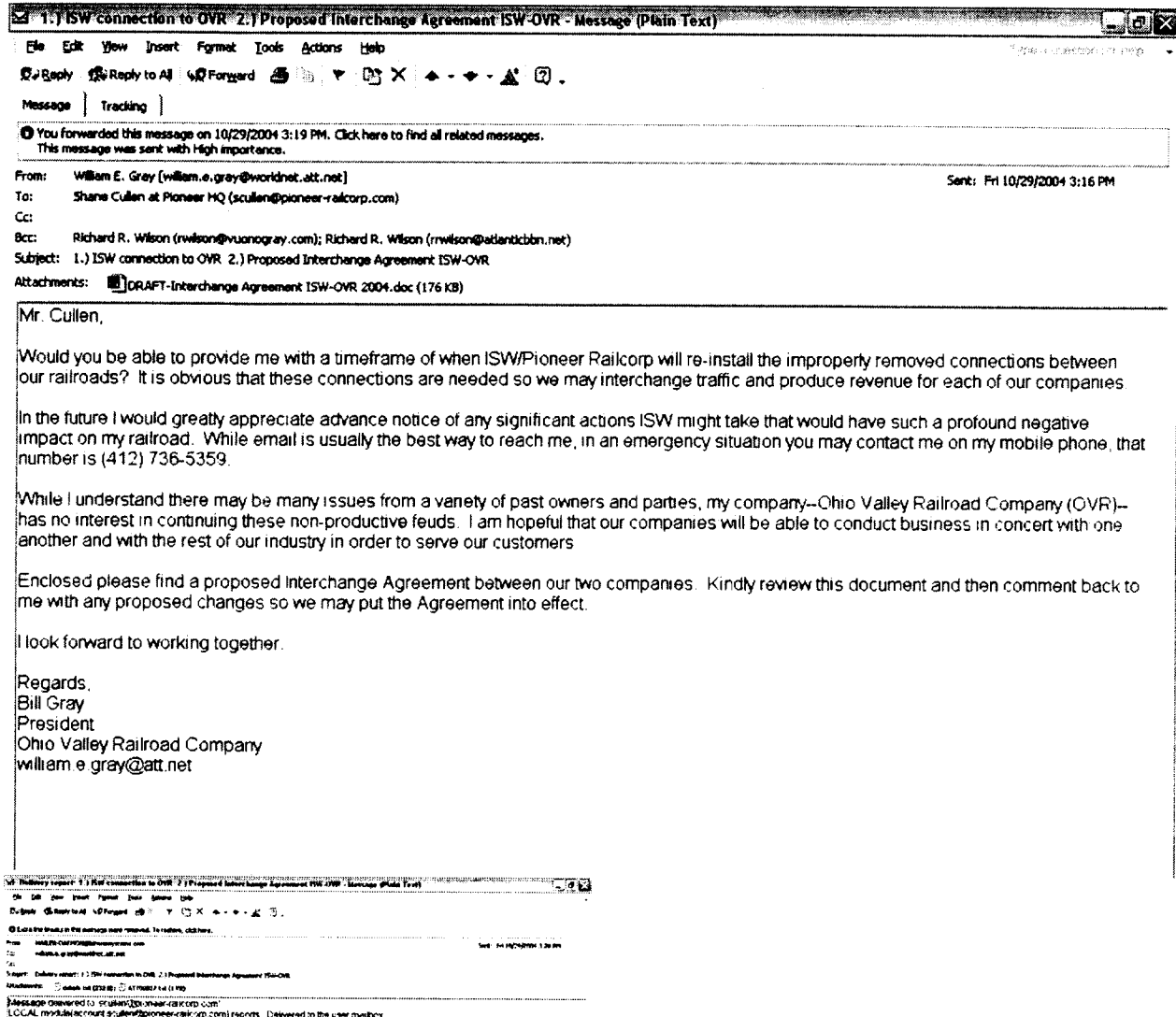
Original ties were used and spikes were driven in existing spike holes without plugging the original holes (this will probably lead to rapid loosening of the spike and prevent ability to hold gauge).



ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT B

OVR Request for Interchange Agreement – October 29, 2004 sent via Email



ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT C

OVR Request for Interchange Agreement – November 24, 2004 sent via Email

Proposed Interchange Agreement OVR and ISW - Message (Plain Text)

File Edit View Insert Format Tools Actions Help

Reply Reply to All Forward

Message Tracking

This message was sent with High importance.

From: William E. Gray [william.e.gray@worldnet.att.net]
To: Daniel A. LaKemper Esq. (lakemper@mtco.com)
Cc: Richard R. Wilson (rrwilson@vuonogray.com); Richard R. Wilson (rrwilson@atlanticdbn.net)
Subject: Proposed Interchange Agreement OVR and ISW
Attachments: DRAFT-Interchange Agreement ISW-OVR 2004 to DAL.doc (176 KB)

Sent: Wed 11/24/2004 3:35 PM

Dear Mr. LaKemper,

Per your request to Attorney Wilson please find attached draft of proposed Interchange Agreement between Ohio Valley Railroad Company (OVR) and Indiana Southwestern Railway Company (ISW).

Kindly contact me if you have any questions regarding this matter.

Best Wishes for a Happy Thanksgiving.

Sincerely,

William E. Gray
President
Ohio Valley Railroad Company

Delivery Notification - Message (Plain Text)

File Edit View Insert Format Tools Actions Help

Reply Reply to All Forward

Like this email in the message was returned. To receive, click here.

From: Postmaster (postmaster@mtco.com)
To: william.e.gray@worldnet.att.net
Sent: Wed 11/24/2004 3:36 PM

Subject: Delivery Notification

Attachments: DRAFT-Interchange Agreement ISW-OVR 2004 to DAL.doc (176 KB)

Your message was successfully relayed via mtco.com for delivery to lakemper@mtco.com

The Perimail mail system does not support confirmation of actual delivery. Unless delivery fails, this will be the only delivery status notification sent.

ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT C (cont'd)

Re: OVR/ISW Interchange - Message (Plain Text)

File Edit View Insert Format Tools Actions Help

Reply Reply to All Forward

You forwarded this message on 12/1/2004 6:28 PM. Click here to find all related messages.
This message was sent with High Importance.
Extra line breaks in this message were removed. To restore, click here.

From: Dan LaKemper [lakemper@mtco.com]
To: William E. Gray
Cc:
Subject: Re: OVR/ISW Interchange

Sent: Wed 12/1/2004 9:11 AM

Mr. Gray,
Before I could finalize our proposal I needed to get an on-site inspection. That should be completed today. Dan LaKemper

----- Original Message -----
From: "William E. Gray" <william.e.gray@worldnet.att.net>
To: "Dan LaKemper" <lakemper@mtco.com>
Sent: Monday, November 29, 2004 7:49 PM
Subject: RE: OVR/ISW Interchange

> Mr. LaKemper,
>
> Thank You for the timely response.
>
> Bill Gray
> Ohio Valley Railroad Company
>
> -----Original Message-----
> From: Dan LaKemper [mailto:lakemper@mtco.com]
> Sent: Monday, November 29, 2004 4:29 PM
> To: william.e.gray@worldnet.att.net
> Subject: OVR/ISW Interchange
>
> Mr. Gray,
> I received your e-mail and should have a red-lined proposal back to
> you tomorrow.
> Dan LaKemper
> ISW
>
>

EXHIBIT C (cont'd)

ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT C (cont'd)

Re: Interchange Agreement OVR-ISW - Message (Plain Text)

File Edit View Insert Format Tools Actions Help

Reply Reply to All Forward

You forwarded this message on 12/13/2004 9:09 PM. Click here to find all related messages.
Extra line breaks in this message were removed. To restore, click here.

From: Dan Lakemper [lakemper@mtco.com]
To: William E. Gray
Cc:
Subject: Re: Interchange Agreement OVR-ISW

Sent: Mon 12/13/2004 8:51 PM

I had another emergency. It's coming.

----- Original Message -----
From: "William E. Gray" <william.e.gray@worldnet.att.net>
To: "Dan Lakemper" <lakemper@mtco.com>
Cc: "Richard R. Wilson" <rwilson@vuonogray.com>
Sent: Monday, December 13, 2004 7:40 PM
Subject: Interchange Agreement OVR-ISW

> Dan,
>
> I haven't received the marked-up copy of the Interchange Agreement
> that you indicated you were going to return to me last week.
>
> Bill Gray
> President
> Ohio Valley Railroad Company
>
>
>

ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT C (cont'd)

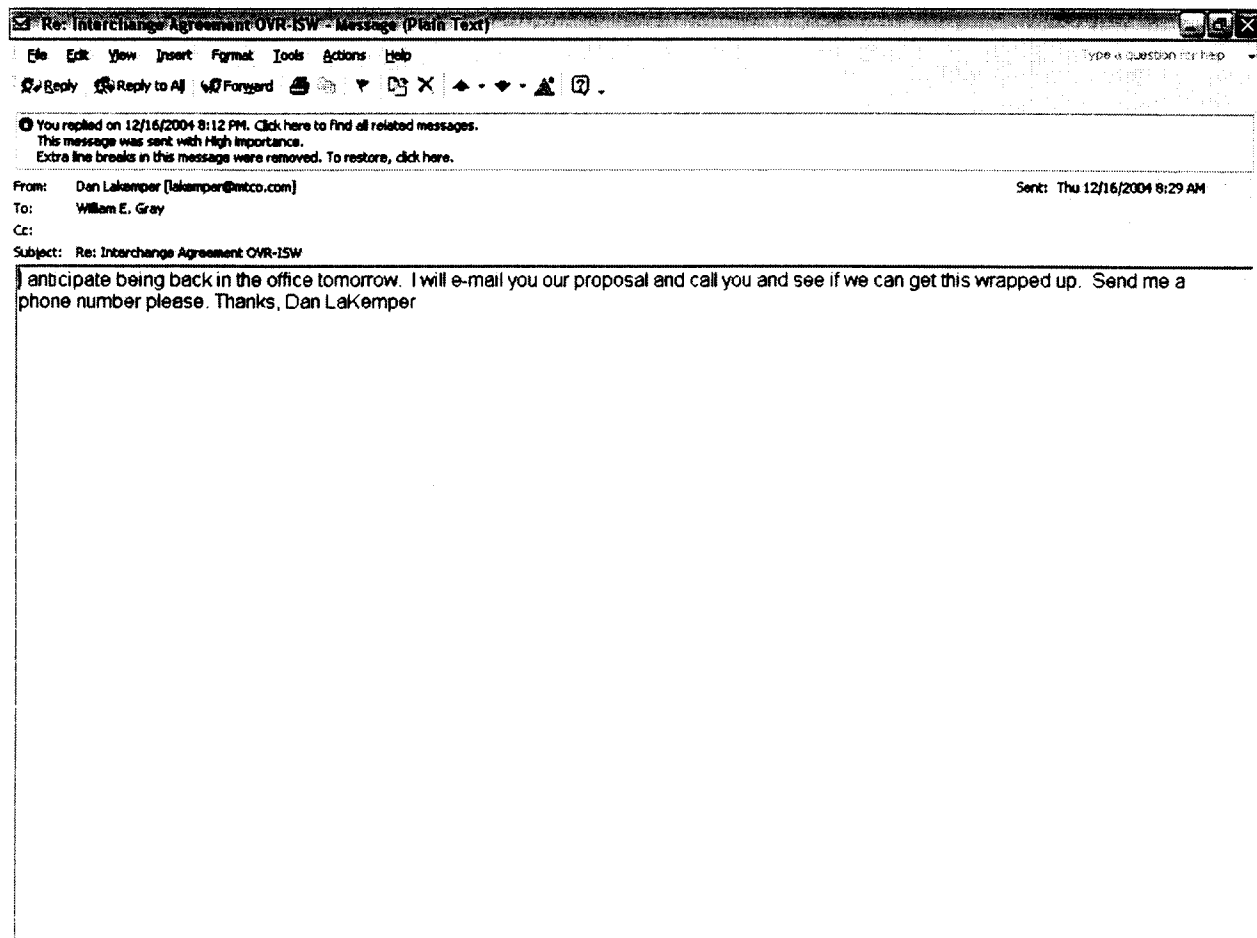


EXHIBIT E

FT ISW 8000-F
(Cancels 8000-E)

INDIANA SOUTHWESTERN RAILWAY CO.

FREIGHT TARIFF ISW 8000-F
(Cancels ISW 8000-E)

**NAMING
RATES AND CHARGES
COVERING
SWITCHING**

BETWEEN

AND

**ALL STATIONS
ON THE
ISW**

**INTERCHANGE WITH CONNECTIONS
AT
EVANSVILLE, IN**

GENERAL SWITCHING TARIFF

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with Particular items.

ISSUED: October 12, 2004

EFFECTIVE: November 1, 2004

ISSUED BY:

**Catherine Busch, Director of Marketing
INDIANA SOUTHWESTERN RAILWAY CO.
1318 So. Johanson Road
Peoria, IL 61607**

(The provisions published herein, if effective, will not result in an effect on the quality of the human environment.)

FT ISW 8000-F
(Cancels FT ISW 8000-E)

RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS

ITEM 5 SUPPLEMENTS AND REISSUES

When reference is made in this tariff, or supplements, to other publications for rates or other information, it includes "Supplements" thereto or successive issues thereof.

As this tariff is supplemented, numbered items with letter suffices cancel correspondingly number items in the original Tariff, or in a prior supplement. Letter suffices will be in Alphabetical sequence starting with A. Example: Item 100A cancels Item 100; and Item 300-B cancels Item 300-A in a prior supplement, which in turn cancelled Item 300.

ITEM 25 MILEAGE CHARGES ON PRIVATELY OWNED CARS

The ISW will not pay any mileage charges on privately owned or leased equipment when moving from, to, or via stations on the ISW.

ITEM 30 CAR DEMURRAGE, DETENTION AND STORAGE
RULES AND CHARGES

For rules and charges to apply, See Freight Tariff ISW 6004 series and Freight Tariff ISW 8998 series.

ITEM 40 NON-ABSORBED INTERMEDIATE SWITCH RATE

The rates listed herein do not absorb the intermediate switch rate between CSXT and NS. The ISW interchanges directly with CSXT at Evansville, IN.

SECTION 1
SWITCHING

ITEM 1000 INTERCHANGE SWITCHING
(See Notes 1,2,3,4,5,6 and 7 for this item)

The Indiana Southwestern Railway Co. (ISW) will perform switching between industries located at stations shown below and interchange with CSXT (Direct) and NS (via intermediate switch) at Evansville, IN at the

Charges indicated below:

(Charges are in Dollars and Cents per Cars, unless otherwise noted)

STATION	INDUSTRY	COMMODITY	INTERCHANGE	CHARGE
Evansville, IN	Mid America Locomotive and Car Repair Shop	Rail cars (other than locomotives, cabooses, and passenger cars)	CSX	\$ 250.00 (includes in & out)
			NS	\$ 250.00 (includes in & out)
		Locomotives	CSX	\$2,500.00 (includes in & out)
			NS	\$2,500.00 (includes in & out)
		Cabooses	CSX	\$1,000.00 (includes in & out)
			NS	\$1,000.00 (includes in & out)
		Passenger Cars	CSX	\$2,500.00 (includes in & out)
			NS	\$2,500.00 (includes in & out)

Note 1: These charges apply only when customer is physically served by ISW. Intermediate switch charges will apply as noted in Item 2000.

Note: Switch charges for empty railcars, locomotives, and passenger cars will be billed to Mid America Locomotive at first move by ISW.

Switch charge monies are due and payable to ISW within 15 days of receipt of invoice, and/or all charges to be "PAID IN FULL" prior to rail cars moving offline.

"Loaded cars destined to Mid America Locomotive for the account of GE Plastics, will incur the \$250 switch charge with charges due and payable as follows: \$200.00 of the switch charge will be assessed against and billed to CSX; \$50.00 will be assessed against and billed to Mid America Locomotive. All switch charges will be billed at time of the inbound move or upon first move by ISW.

Cars will not be considered released, AND NO CARS WILL MOVE OFF LINE, UNTIL ALL CHARGES FOR SERVICES ARE "PAID IN FULL."

SECTION 1
SWITCHING
(continued)

ITEM 1000 - continued

INTERCHANGE SWITCHING
(See Notes 1,2,3,4,5,6 and 7 for this item)

STATION	INDUSTRY	COMMODITY	INTERCHANGE	CHARGE
Evansville, IN	GE Plastics	Loads being held in storage on ISW owned tracks (if furtherance to Mt. Vernon, IN)	CSX	\$ 200.00 (includes in & out)
Note: Charges for switching of empties being held in storage as well as storage charges will be billed to GE Plastics.				
Evansville, IN	All Other Industries	Freight, all kinds, except fertilizer and grain - See Note 7	CSX	\$ 530.00
			NS	\$ 530.00
Poseyville, IN	All Industries	Freight, all kinds, except fertilizer and grain - See Note 7	CSX	\$ 530.00
			NS	\$ 530.00
Cynthiana, IN	All Industries	Freight, all kinds, except fertilizer and grain - See Note 7	CSX	\$ 530.00
			NS	\$ 530.00

Note: The above charges apply only when customer is physically served by ISW. Intermediate switch charges will apply as noted in Item 2000.

ITEM 2000

INTERMEDIATE SWITCHING RATES

Application and Definition of Intermediate Switching

A switching movement of cars from the interchange tracks of one connecting carrier to the interchange tracks of another connecting carrier with the switching limits of the same station on which the switch carrier neither originates nor terminates the shipment nor receives a line-haul.

Charges Indicated Below:

(Charges are in Dollars and Cents per car, unless otherwise noted.)

STATION	COMMODITY	RATE
Evansville, IN	Freight All Kinds, not including cabooses, passenger cars and locomotives. Also - See Note 7.	\$ 250.00
	Locomotives	\$2500.00
	Passenger Cars	\$2500.00
	Cabooses	\$1000.00

Note: Rates apply in each direction on all movements, loaded or empty. Such charge will be assessed against the carrier handing off the car to the ISW, and will apply on loads and empties.

Note 1 - On all moves involving loaded cars, switch charges will be assessed against and billed to the connecting carrier.

See exception * for loaded cars moving to Mid America for account of GE Plastics.

Note 2 - No switching charges of the line haul charges will be absorbed by the ISW.

Note 3 - For cars moving to/from ISW, intermediate switch charges for cars moving between NS and CSX at Evansville, IN will not be absorbed by the ISW.

Note 4 - All charges will be "paid in full"; or acceptable arrangements will have been made for payment prior to final movement (inbound/outbound) of rail cars on/off ISW.

Note 5 Subject to Rule 5 - Switching Car Hire Expense recovery - Code of Car Hire Rules and Interpretation as published in the Official Railway Equipment Register - Circular OT - 10.

Note 6 - For grain switching rates to apply, see Freight Tariff ISW 8001. For fertilizer rates to apply, see Freight Tariff ISW 8002.

Note 7 - Above switch charges do not cover dimensional-lu-wide loads/heavy loads/loads requiring livy duty or special equipment. Contact ISW Marketing for charges (309) 697-1400.

ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

EXHIBIT F

DRAFT INTERCHANGE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2004, by and between Indiana Southwestern Railway Company (hereinafter "ISW") and Ohio Valley Railroad Company (hereinafter "OVR").

WHERE AS, OVR has been granted an Exemption by the Surface Transportation Board to acquire and operate the Railroad Premises owned by Harwood Properties, Incorporated of Vanderburgh County, Evansville, Indiana and identified as the Harwood Yard line of railroad (Track numbers four (4) through eleven (11) including leads and hereinafter referred to as "HY411"); and

WHERE AS, OVR will operate HY411; and

WHERE AS, with the inception of operations, it is necessary to establish an interchange location between ISW and OVR at HY411 in Vanderburgh County, Indiana; and

WHERE AS, OVR hereby desires to enter into an agreement to provide for the interchange of loaded and empty railroad rolling stock on OVR's Track number Nine (9) in HY411.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. For the purpose of interchanging loaded and empty railroad rolling stock between ISW and OVR, the designated interchange track (hereinafter "Interchange Track") will be located on the South end of Track number Nine (9) South (hereinafter referred to as "T9S") within HY411 (see attached Diagram A). The Interchange Track point of beginning will be at a point on T9S which prevents fouling of the ladder track at the T9S switch. However, OVR reserves the right to change the designated Interchange Track location and/or description and the access thereto (as described in Paragraph 2 and subsequent) under this Agreement as may be necessitated due to realignment and/or reconfiguration of the HY411 track structure.
2. For the sole purpose of reaching the Interchange Track (see attached Diagram A) and to permit the actual interchange movement:
 - a. ISW grants OVR access to the ladder track at the South end of the ISW Track Numbers One (1) through Three (3) (hereinafter referred to as the "ISW Interchange Access Track") and,
 - b. OVR grants ISW access to the ladder track at the South end of the OVR Track Numbers Four (4) through Nine (9) (hereinafter referred to as the "OVR Interchange Access Track").
3. The party receiving the rolling stock in interchange shall be responsible for making a mechanical inspection thereof in accordance with the current rules of the Association of American Railroads. Each piece of rolling stock, when accompanied by proper billing for forwarding, shall be considered as interchanged from the account of one party to the other when placed on the Interchange Track described in Paragraph 1; provided, however, that if said rolling stock fails the mechanical inspection referred to in the preceding sentence, then that rolling stock involved shall not be considered as interchanged as provided above.
4. The interchange of rolling stock covered by this Agreement shall be governed by the applicable Interchange Car Service and Car Hire Rules and any supplements thereto, promulgated from time to time by the Association of American Railroads ("AAR") and/or the American Shortline and Regional Railroad Association ("ASLRR").
5. Car Hire accounting on all rolling stock interchanged to OVR will be handled by OVR and it will be OVR's responsibility to settle with the owner(s) of that rolling stock.
6. The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of property whatsoever or injury or death of any person or persons whomsoever (hereinafter collectively referred to as "Damages"), resulting from, arising out of, incidental to, or occurring in connection with this Agreement, shall be determined as follows:
 - a. Each party shall assume and pay for all Damages caused by its fault, failure or negligence, or that of its officers, agents or employees, solely or in conjunction with a third party or parties, or by defects in equipment while in its care, custody or control, including without limitation costs referred to in Paragraph 7 hereof, provided, however, that Damages incurred by OVR caused by defects in the ISW Interchange Access Track shall be borne solely by ISW, and that Damages incurred by ISW caused by defects in the Interchange Track or the OVR Interchange Access Track shall be borne solely by OVR.
 - b. Each party hereto shall assume and pay for all Damages to its property and property in its care, custody or control, and Damages suffered by its officers, agents and employees caused by the joint or concurring negligence of the parties hereto and/or their officers, agents or employees, or arising from undetermined causes. All other Damages so caused shall be borne equally by the parties hereto, including without limitation the costs referred to in Paragraphs 7 and 8 hereof.
 - c. Each party hereto shall release, indemnify, defend and save harmless the other party and its officers, agents, and employees from and against any and all Damages, cost, and expense for which it is reasonably responsible under this Paragraph 6, and from and against any and all claims, actions and demands therefor.
 - d. In every case of death or injury suffered by an officer, employee, or agent of either party hereto, when compensation to such employee or employee's dependants is required to be paid under any Workmen's Compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any future installments are to be paid.

ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

7. The clearing of wrecks or derailments and the repair and restoration of roadbed, track and structures, on the Interchange Track or the OVR Interchange Access Track while OVR is operating on that Track will be performed by OVR or its agent and the cost thereof will be borne solely by OVR.
8. The clearing of wrecks or derailments and the repair and restoration of roadbed, track and structures, on the Interchange Track or the OVR Interchange Access Track while ISW is operating on that Track (for the sole purpose of interchanging traffic with OVR) will be performed by OVR or its agent and the cost thereof will be distributed in accordance with Paragraph 6 above.
9. The clearing of wrecks or derailments involving rolling stock being interchanged with ISW and the repair and restoration of roadbed, track and structures, on the ISW Interchange Access Track while OVR is operating on the Track (for the purpose of interchanging traffic with ISW) will be performed by OVR or its agent and the cost thereof will be distributed in accordance with Paragraph 6 above.
10. The clearing of wrecks or derailments involving rolling stock being interchanged with OVR and the repair and restoration of roadbed, track and structures, on the ISW Interchange Access Track while ISW is operating on the Track will be performed by ISW or its agent and the cost thereof will be solely the responsibility of ISW.
11. All OVR employees or agents operating locomotive(s) on the Access Track will be governed by the then current ISW Operating Rulebook and will also observe and comply with generally accepted safety practices. ***Under no circumstances will OVR employees or agents kick, hump or otherwise switch rolling stock detached from a locomotive while operating on the ISW Interchange Access Track. Furthermore, no OVR employee or agent will operate a train or locomotive on the ISW Interchange Access Track at a speed in excess of five (5) miles per hour. OVR employees or agents will obtain clearance authority from the designated ISW representative prior to operating on the ISW Interchange Access Track.***
12. All ISW employees or agents operating locomotive(s) on the Interchange Track and the OVR Interchange Access Track will be governed by the then current OVR Operating Rulebook and will also observe and comply with generally accepted safety practices. ***Under no circumstances will ISW employees or agents kick, hump or otherwise switch rolling stock detached from a locomotive while operating on the Interchange Track or the OVR Interchange Access Track. Furthermore, no ISW employee or agent shall operate a train or locomotive on the Interchange Track or the OVR Interchange Access Track at a speed in excess of five (5) miles per hour. ISW employees or agents will obtain clearance authority from the designated OVR representative prior to operating on the Interchange Track or the OVR Interchange Access Track.***
13. Each party will obtain any regulatory approvals necessary to carry out the provisions of this Agreement and will conform to all federal and state statutes, regulatory requirements and orders relating to rail service to be performed under this Agreement and will defend, indemnify and hold the other party harmless against the costs of compliance, penalties, liabilities for damages, or other consequences for any failures to obtain such statutes and regulatory approvals or to adhere to such statutes and regulatory requirements.
14. Each party to this Agreement acknowledges that they are acting as a part of the national railroad system and as such will cooperate with the other party to encourage the shipment of freight and rolling stock and prevent restraint of trade. Each party also agrees that they will not frustrate the flow of rail traffic by untimely placement, or by withholding placement of rolling stock to or from the Interchange Track.
15. Settlement of account, payments and billings.
 - a. All payments called for under this Agreement shall be made by the responsible party within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the account of the subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.
 - b. Bills rendered pursuant to the provisions of this Agreement shall include direct labor (including contractors and sub-contractors) and material costs, together with surcharges, overhead percentages, and equipment rentals that the parties hereto may agree upon at the time any work is performed.
16. This Agreement will become effective upon the Commencement of Interchange and will continue in force and effect until terminated by either party upon sixty (60) days written notice to the other party.
17. Termination of this Agreement shall not release either party hereto from any liability which may have incurred or any obligations which may have accrued under any provision of this Agreement or any amendment or supplement hereto, prior to the effective date of termination.

ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

18. All notices required to be given by either party to the other in regards to modifications or amendments to this Agreement shall be in writing and sent postage paid via a method with independently confirmed delivery (e.g.: U. S. Postal Service—Certified Mail; FEDEX Letter; UPS Letter; etc.) to the address as follows:

a. If to ISW:

Indiana Southwestern Railway
c/o Pioneer Railcorp
13185 Johanson Road
Peoria, IL 61607

b. If to OVR:

Ohio Valley Railroad Company
c/o Vuono & Gray, LLC
Mr. Richard W. Wilson
2310 Grant Building
Pittsburgh, PA 15219-2383

19. All notices required to be given by either party to the other in regards to daily operations and Interchange shall be in writing and sent by electronic means (Email or Telefax) with confirmation requested via return electronic means:

a. If to ISW:

Indiana Southwestern Railway

b. If to OVR:

Ohio Valley Railroad Company

ATTACHMENT TO
VERIFIED STATEMENT OF WILLIAM E. GRAY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first hereinbefore written.

INDIANA SOUTHWESTERN RAILWAY

Attest:

By: _____

By: _____

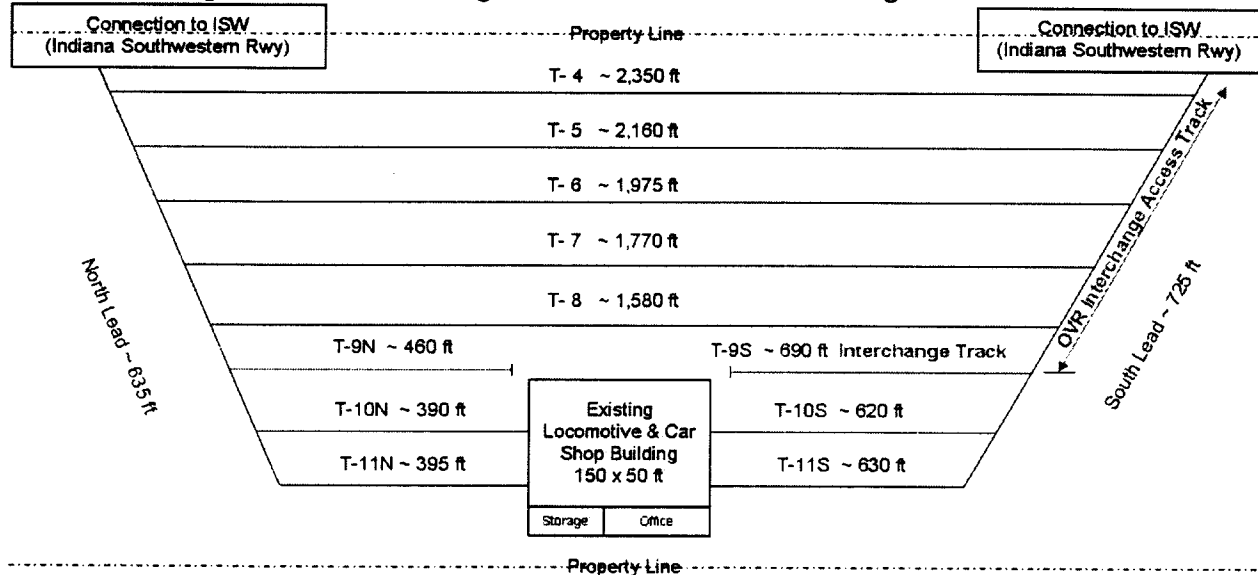
OHIO VALLEY RAILROAD COMPANY

Attest:

By: _____

By: _____

Diagram A – Interchange Track and OVR Interchange Access Track



Ohio Valley Railroad Company
Harwood Yard—North of West Aliens Lane
Vanderburgh County, Evansville Indiana 47710
Interchange Track Configuration (not to scale)
August 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34608

OHIO VALLEY RAILROAD COMPANY – PETITION TO RESTORE SWITCH
CONNECTION AND OTHER RELIEF

VERIFIED STATEMENT OF BRUCE E. KNIGHT

Richard R. Wilson, Esq.
Vuono & Gray, LLC
2310 Grant Building
Pittsburgh, PA 15219
412-471-1800
Attorney for
Mid-America Locomotive
and Car Repair, Inc.
and
Ohio Valley Railroad Co.

Dated: May 12, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34608

OHIO VALLEY RAILROAD COMPANY – PETITION TO RESTORE SWITCH
CONNECTION AND OTHER RELIEF

VERIFIED STATEMENT OF BRUCE E. KNIGHT

My name is Bruce E. Knight. I am President of Mid-America Locomotive and Car Repair, Inc. ("Mid-America"). Our railcar repair shop is located in Harwood Yard, Evansville, Indiana. We do general rail car and locomotive repairs for industrial customers and short line railroads, but we also specialize in the repair and restoration of historic locomotives and passenger cars for tourist and scenic railroads and rail museums. My car repair business is served by Ohio Valley Railroad Company ("OVR"). Over the last year and a half, I have experienced recurring difficulties in obtaining rail service because of the conduct and actions of Indiana Southwestern Railway ("ISW"). ISW crews removed the switch connections through which my plant is served and only after the STB ordered ISW to reinstall the switch four months later did ISW reconnect that switch. Even then, that reinstallation has not been properly done and ISW has created a very dangerous and unsafe switch connection which is useless for purposes of moving

locomotives and cars to or from my repair shop facilities. I have inspected the manner in which ISW reconstructed the south end switch into Harwood Yard and the description of the reinstallation provided by Mr. William Gray accurately describes the deficiencies and dangers in that reinstallation work.

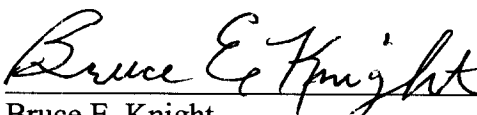
In prior correspondence to the Board, I have expressed my frustration and anger with the conduct and attitude of ISW management personnel who have refused to treat repair traffic interchanged via OVR to and from my repair business in a non-discriminatory and reasonable fashion. Before OVR acquired Harwood Yard for common carrier rail purposes, Mid-America enjoyed a switch charge from ISW of \$150 per car each way. I had a substantial amount of locomotive and car repair business, but on November 1, 2004, ISW increased its switch charge to \$2,500 per locomotive or passenger car each way. With the removal of the switch my car repair business at Harwood Yard completely vanished and I have been repeatedly told by numerous customers that they simply cannot afford a \$5,000 switch charge to get their passenger cars or locomotives to my repair shop and then returned to them even if there was a properly reinstalled switch connection. Moreover, ISW demands that both the inbound and outbound switch charge be paid in advance despite the fact that a car or locomotive may be in our shop for several months undergoing repairs. The discriminatory practices utilized by ISW threaten my livelihood and my business. I am therefore urgently requesting that the Board grant the relief requested in the joint Petition (a) directing ISW to properly install its switch; (b) prescribing an Interchange Agreement between ISW and OVR; (c) directing ISW to cease and desist from using exclusionary practices to prevent

switch charge of \$125 per car in each direction for Mid-America's car repair shop which is comparable to the ISW switch charge published for an identical switch for G.E. Plastic's equipment.

VERIFICATION

I, Bruce E. Knight, verify under penalty of perjury state that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing Verified Statement.

Executed on May 12, 2005.


Bruce E. Knight